

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DOMBROWSKI, et al.,
Plaintiffs

CIVIL ACTION

v.

WISSAHICKON SCHOOL DISTRICT,
Defendant

NO. 01-5094

ORDER AND MEMORANDUM

AND NOW, this 14th day of December, 2001, upon consideration of Defendant, Wissahickon School District's, Motion to Dismiss Plaintiffs' Complaint (Docket #4), the plaintiffs' response thereto, and following a conference in chambers on December 4, 2001, it is HEREBY **ORDERED** that said Motion is **GRANTED IN PART and DENIED IN PART**, for the **reasons** that follow. The Motion is GRANTED insofar as it seeks to dismiss the **plaintiffs'** claim for punitive damages. In all other respects, the Motion is DENIED.

The plaintiffs in this action are Diane Dombrowski and her son Jason, who is a **profoundly** disabled **student residing** within the boundaries of the Wissahickon School District ("the district"). From approximately 1994 to 1999, **Jason was, at the expense and recommendation** of the district, enrolled at the Devereaux Foundation, where he worked on developing personal life

skills, vocational skills, functional academics, and social and emotional skills.' In late September, 1999, Ms. Dombrowski met with representatives of the district to voice concerns regarding the Deveraux school program. Jason was disenrolled from Deveraux on October 4, 1999.

After Jason left Deveraux, he was not thereafter enrolled in another school program. Ms. Dombrowski became the care-giver of Jason in their home, and was required to expend out-of-pocket funds for his care. Ms. Dombrowski eventually lost her job because of the demands that Jason's care placed upon her.

On October 9, 2001 the plaintiffs filed the instant complaint. The complaint alleges causes of action against the Wissahickon School District under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 ~~et seq.~~ ("IDEA"), and under 42 U.S.C. § 1983.² The plaintiffs claim that the district failed to provide Jason with a Free Appropriate Public

¹ Unless otherwise noted, the facts are recited from the complaint. The complaint will not be dismissed unless, giving the plaintiffs the benefit of every favorable inference that can be drawn from the allegations, it appears certain that the plaintiffs cannot prove any set of facts in support of their claim which would entitle them to relief. See Schrob v. Catterson, 948 F.2d 1402, 1405 (3d Cir. 1991); Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988).

² Jurisdiction in this Court is proper under 20 U.S.C. § 1415 because the plaintiffs have apparently exhausted their administrative remedies pursuant to the administrative review procedures of the IDEA.

Education after he was disenrolled from the Deveraux Foundation, in violation of the IDEA. The plaintiffs also claim that their procedural due process rights were violated during the IDEA administrative proceedings that took place before this lawsuit was filed.

The district has moved to dismiss the complaint on three grounds. First, the district asserts that because the complaint does not recite a governmental policy, practice or custom that led to **the** violation of the plaintiffs' rights, the district cannot liable for damages under § 1983. Next, the district argues that Ms. Dombrowski cannot bring a claim for damages in **her** own right because the IDEA does not confer substantive rights upon parents of disabled children. Finally, the district asserts that punitive damages should not be available against local government entities under the IDEA.

In order for a local government entity to have liability under § 1983, a plaintiff must establish that the deprivation of her rights was the result of an official policy, custom or practice. See Monell v. Dept. of Soc. Servs. of the City of New York, 436 U.S. 658, 690 (1978); Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 252 (3d Cir. 1999). The complaint in this case, contrary to the assertions of the defendant, does recite a practice that could conceivably satisfy the Monell

requirements for governmental liability.³ The complaint alleges that because the due process fact-finders are selected and compensated by the Commonwealth of Pennsylvania, whose "agency is a defendant in the present matter", these fact-finders have no **independence** and a conflict of interest. Complaint at ¶15.

At conference, counsel for the district asserted that the proper defendant for such a claim is the Commonwealth of Pennsylvania, and not the district. Because neither party has briefed the merits of this argument, however, the Court declines to, at this stage, dismiss the plaintiffs' § 1983 claim. Without expressing any view on the merits of the claim, it is enough to say that the complaint recites a governmental policy, custom or practice, as required by Monell.

The Third Circuit has held that parents do not have joint substantive rights with their disabled children under the IDEA. Collinsgru v. Palmyra Bd. of Educ., 161 F.3d 225, 236-7 (3d Cir. 1998). It is clear, however, that under the IDEA, parents are granted specific procedural rights, which they may

³ Rather than attack the merits of the § 1983 claim, the district has simply argued that the complaint "is absolutely devoid of any assertions suggesting the existence of a policy, practice, or custom of which plaintiffs **contend** to have been victims." Def. Br., at 3. For that reason, the Court's response does not speak to the merits of the § 1983 claim, but only to whether the complaint alleges a policy, practice or custom.

enforce in administrative proceedings and in federal court. Id., at 233. The IDEA allows parents to seek certain monetary redress in federal court for expenses incurred because of violations of these procedural rights. ~~See, e.g., Burlington Sch. Comm. v. Massachusetts Dept. of Educ.~~, 471 U.S. 359, 368 (approving the award of tuition reimbursement for parents under IDEA); ~~David P. v. Lower Merion Sch. Dist.~~, No. Civ. A. 98-1856, 1998 WL 720819, at *7 (E.D. Pa. Sept. 18, 1998) (approving award of reimbursement for parental expenditures that were "an essential part" of the child's educational program).

In addition, "an aggrieved parent . . . is not barred from seeking monetary damages" in a § 1983 claim based on an IDEA violation. W.B. v. Matula, 76 F.3d 484, 495 (3d. Cir. 1995). Because the Court does not, at this point, dismiss the plaintiffs' § 1983 claim, and because a parent may seek certain monetary reimbursement under the IDEA, the Court will also decline to at this point dismiss the claim of Ms. Dombrowski in her own right.⁴

⁴ The defendant cites Mapp v. William Penn School District, No. Civ. A. 99-4440, 2000 WL 1358484 (E.D. Pa. Sept. 18, 2000) in support of its motion to dismiss Ms. Dombrowski's claim in her individual capacity. In Mapp, however, the parent brought claims in her own right under § 504 of the Rehabilitation Act, the Americans with Disabilities Act, and §§ 1983, 1985 and 1988, not under the IDEA. Mapp, 2000 WL 1358484, at *4. In dismissing
(continued...)

The Court will, however, dismiss the plaintiffs' claims for punitive damages. The Third Circuit, following the Supreme Court's teaching of City of Newport v. Fact Concerts, Inc., 453 U.S. 247 (1981), has held that the traditional common law immunity of municipalities from punitive damages can be statutorily overcome only where "Congress intended to disturb" that immunity. Doe v. County of Centre, Pa., 242 F.3d 437, 456 (3d. Cir. 2001) (finding that punitive damages could not be recovered against municipalities under Title II of the ADA or § 504 of the Rehabilitation Act). The plaintiffs here have not alleged nor attempted to show that Congress intended, in passing the IDEA, to overcome the traditional common law immunity of municipalities from punitive damages.' For that reason, they have not established a right to seek punitive damages against the district in this case.⁶ See also Joseph M. v. Southeast Delco Sch. Dist., No. Civ. A. 99-4645, 2001 WL 283154, at *11 (E.D. Pa. Mar. 19, 2001) ("plaintiffs may not recover for punitive damages

⁴ (...continued)
these claims, the Mapp court made no mention of the IDEA.

⁵ The plaintiffs rely on Woods v. New Jersey Dept. of Educ., 796 F. Supp. 767 (D.N.J.1992) to support their claim for punitive damages under the IDEA. Woods, however, was decided before Doe.

⁶ Of course, the district cannot be liable for punitive damages under § 1983. See City of Newport v. Fact Concerts, Inc., 453 U.S. 247, 271-2 (1981).

because neither the IDEA nor section 1983 allow for such recovery against municipalities).

In addition, the Court **observes** that considerations of policy counsel against allowing punitive damages against municipalities under the IDEA. As the Third Circuit has noted, 'notions of retribution and deterrence provide weak support for awarding punitive damages against dispassionate municipal government entities, rather than offending officials.' Doe, 242 F.3d at 457 (citing City of Newport). Further, "awarding such damages threatens the financial integrity of local governments." Id.⁷ Because the plaintiffs cannot recover punitive damages against the defendant under § 1983, and because the plaintiffs have not shown that they are entitled to do so under the IDEA, the plaintiffs' claim for punitive damages will be dismissed.

It is so Ordered.

BY THE COURT:


MARY A. McLAUGHLIN, J.

⁷ The Court also notes that other federal appellate courts have squarely held that punitive damages are unavailable under the IDEA. See, e.g., Sellers v. Sch. Bd. of Manassas, 141 F.3d 524, 527-8 (4th Cir. 1998); Heidemann v. Rother, 84 F.3d 1021, 1033 (8th Cir. 1996).